

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:08CR345
)	
v.)	
)	
LAZARO MEDINA-AYON,)	ORDER
)	
Defendant.)	
)	

Defendant has filed a request to appeal in this case. Filing No. 84. The Clerk of Court has notified the court that such request is outside of the 30-day appeal time limit set forth in Fed. R. App. P. 4(a). However, the court has discretion to permit defendant to file out of time for good cause. The court notes that although defendant had counsel during the trial, defendant is proceeding on appeal pro se. Defendant contends that his counsel indicated she would file his notice of appeal but she failed to do so. Defendant further indicates that he has tried to contact counsel on several occasions regarding his appeal. When that failed, he filed a pro se notice of appeal. The court finds the reasons argued by defendant for his late filing do not constitute good cause for his failure to timely file his notice of appeal. It has been in excess of one year since the court entered judgment in this case. See Filing No. 74, June 18, 2009. Defendant has clearly not complied with the requirements of Fed. R. Civ. P. 4(b) and good cause does not exist for the year delay. Accordingly, the court will not allow his appeal to be filed out of time. Likewise, the court will not permit the defendant to proceed in forma pauperis for the same reasons stated within this order. In addition, the defendant had retained counsel during the pendency of this case and no affidavits or trust statements have been filed with this court.

THEREFORE, IT IS ORDERED that defendant's appeal, Filing No. 84, is not timely filed. It is further ordered that the court will not permit the defendant to proceed in forma pauperis.

DATED this 9th day of November, 2010.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge